IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 3311 of 2005

Between:

1 AD-AGE OUT DOOR ADVGT (P) LTD., rep by Mr.Syed Iqbal Mehdi, S/o.Late S.Y.Nawab, having its office at Plot, No.246/A, ML's colony road No.12, Banjara Hills, Hyderabad.
2 ADITYA Arts, rep. by its proprietor Mr.M.Vijay Bhasker, S/o.M.V.B. Murthy, having its office at 8-3-214/29, Srinivasa Colony (West) Ameerpet, Hyderabad.
3 Janahita Publicities (p) Ltd., rep by Mr.G.M.Rama Krishna S/o.G.V.Rao, having its Office at 11-4-650, Flat No.115, Sovereign Shelter, Ladikapool, Hyderabad.
4 Selvel Publicity and Consulatants Ltd., rep by Mr. M.Anil Reddy, S/o.M.Jagan Reddy, having its office, at Selvel House, 1-2-7/1, Bhanu Colony, Gaganmahal Road, Domalguda, Hyderabad
5 ALPS OUT DOORS, rep. by its Proprietor Mr.Mohd.Tariq Sultan S/o.Dr.sultan Mohammed, having its office at 6-2-13/1, II Floor, Lakdikapool, Hyd.,

..... PETITIONERS

AND

Municipal Corporation of Hyderabad rep by its Commissioner, MCH Buildings, Tank Bund Road, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue appropriate writ, order or direction preferably a writ in the nature of Mandamus declaring the notices bearing No.Lr.No.3304/AD3/Advt/MCH/2004 (M.s Selveli Publicity) Lr.No.3304/AD3/ADvt/MCH/2004/366 (Ms Aditya Arts), Lr.No.3304/AD3/Advt/MCH/2004/366 (M/s Ad-age) Lr.No.3304/Ad3/ADvt/MCH/2004/366 (M/s Alphs) Lr.No.3304/Ad3/Advt/MCH/2004/366 (M/s Janahitha)all dt.29.1.2005 issued to the petitioners as being illegal, arbitrary, without any authority under law and violative of Article 14 of the Constitution of India and consequently the Hon'ble Court may be

pleased to suspend the operation of the above notices and to pass such other order or orders.

Counsel for the Petitioner : MR. MAHMOOD ALI

Counsel for the Respondent : SMT.G.JYOTHI KIRAN

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.3311 OF 2005

ORDER :

The petitioners, five in number, are engaged in the business of Outdoor Advertising through the medium of hoardings providing their services to the Companies and the individuals for the purpose of advertisement of their products. It is stated that they erect the hoardings on various types of structures such as Roof Top Structures on Iron Angulars, Ground Structures on Iron Girds and Iron Uni-poles either in the private properties or in the properties belonging to the Department and Local Authorities. Apart from obtaining permission from the owners of the private properties for erecting the hoardings on payment of rent as per the mutually agreed terms, it is also necessary for them to obtain the permission from the respondent - Municipal Corporation of Hyderabad. It is stated that the respondent Corporation collects advertisement fee annually in advance. It is claimed that all the petitioners paid the requisite advertisement fee for their respective hoardings upto 31-03-2005. The petitioners also claim that after the introduction of Uni-pole Concept in twin cities, the petitioners have also been erecting Uni-pole Hoardings and the same are also being subjected to advertisement fee on par with other hoardings on conventional structures. While so, all the petitioners were served with the impugned notices dated 29-01-2005 by the respondent Corporation demanding a sum of Rs.2 lakhs per year for each Uni-pole payable within 7 days stating that the Standing Committee of the Corporation has resolved to regularise the advertisement on the exiting Uni-poles in Private and Government Leased Sites in M.C.H. limits vide

Resolution No.67, dated 28-12-2004 and that the Corporation is permitted to collect licence fee of Rs.2 lakhs per Uni-pole per year in addition to the Advertisement fee. The said notices dated 29-01-2005 are under challenge in this writ petition.

The contention of the petitioners is that the respondent Corporation having collected the advertisement fee in advance upto 31-03-2005 for the hoardings both on Uni-poles and Conventional Structures, has no authority to levy any additional amount towards the advertisement fee. It is also contended that neither the respondent Corporation nor the Standing Committee is empowered to impose an additional amount of Rs.2 lakhs by classifying the hoardings on Uni-poles as a different category. The further contention is that the resolution of the Standing Committee on the basis of which the impugned notices were issued is not traceable to any statutory power and therefore the same is without jurisdiction apart from being arbitrary and illegal.

On behalf of the respondent Corporation, the Additional Commissioner (Advt.), Municipal Corporation of Hyderabad filed a counter-affidavit stating that display of advertisements is different from erection of any structure and that any agency or individual who intends to erect any structure requires prior permission apart from the permission that is required for displaying the advertisements. It is further stated that Uni-pole is a new concept introduced in addition to the traditional system of displaying the advertisements. Corporation has called for tenders for erection of Uni-poles on the land belonging to the Corporation on experimental basis so that various aspects can be studied like Structural Safety, Traffic Problems, etc. Subsequently, a policy was evolved to promote Uni-poles and the same has been approved by the Standing Committee. After a survey by the officials of the respondent Corporation, the Uni-poles that were erected without prior permission as contemplated under the provisions of the Act were identified and it was decided to regularise the said Uni-poles on complying with various conditions including payment of penal amount in accordance with the policy decision instead of removing the Uni-poles that were already erected unauthorisedly. The plea of the petitioners that the advertisement fee collected by the Corporation in advance is in respect of both hoardings on conventional structures and Uni-poles has been denied and it is stated since admittedly no permission was obtained by the petitioners before erecting the Uni-

poles, there is no question of collection of any fee in advance for the purpose of displaying advertisements on Uni-poles. The additional amount now demanded under the impugned notices is not over and above the advertisement fee, but it is for erection of Uni-poles. The decision of the Corporation to regularise the unauthorised construction of Uni-poles subject to complying with certain conditions is to avoid demolition of the said structures and therefore the contentions of the petitioners are untenable. It is also stated that there are 33 Uni-poles in twin cities and out of the 33 Uni-poles the petitioners herein altogether erected 11 Uni-poles and in fact the petitioner No.1 paid part of the amount of Rs.25,000/- and requested time to pay the balance by addressing a letter dated 15-2-2005 and similarly Janahita Ad Agency paid Rs.25,000/- as part payment.

I have heard the learned Counsel for the petitioners as well as the learned Standing Counsel appearing for the respondent Corporation and perused the material on record.

It is not in dispute that the impugned notices are based on the decision of the Standing Committee of the Respondent Corporation vide Resolution No.67, dated 28-12-2004. A perusal of the said resolution shows that the permission for erection of Uni-poles in Private and Government premises was considered by the Standing Committee of the respondent Corporation and the same was permitted subject to 19 conditions specified thereunder. Under Condition No.19, the Commissioner of the Corporation reserves the right to levy licence fee of Rs.2 lakhs per Uni-pole per year in addition to advertisement fee for according permission. The specific case of the respondent is that none of the petitioners obtained prior permission of the Corporation for erecting Uni-poles. The respondent states that as a matter of fact except the Uni-poles erected on the land of the Corporation on experimental basis by inviting tenders, no permission has been granted to any agency for erection of Uni-poles. However, 33 Uni-poles have been erected in twin cities unauthorisedly. In the circumstances, after the Standing Committee passed the resolution on 28-12-2004 resolving to grant permission for erecting Uni-poles subject to 19conditions specified thereunder, which includes levy of licence fees of Rs.2 lakhs per Uni-pole per year, the Corporation has taken a policy decision to regularise the Uni-poles already erected unauthorisedly in the twin cities so as to avoid demolition of the said structures.

Nothing has been placed before this Court by the petitioners to show that they were granted any permission for erection of the Uni-poles. It is true that they were granted renewal of hoardings for exhibiting / displaying advertisements for the year 2004-05 in Form II-A even with regard to Uni-poles for the period upto 31-03-2005. However, as rightly contended by the learned Standing Counsel for the Corporation what was collected by the Corporation was only towards the advertisement fee in terms of Sections 420 and 421 of the Hyderabad Municipal Corporation Act, 1955, whereas the levy under the impugned notice is towards the licence fee for the Uni-poles erected by the petitioners. In the impugned notice itself, it has been clearly stated that the licence fee levied at the rate of Rs.2 lakhs per Uni-pole per year is in addition to the advertisement fee. Thus, it is clear that the licence fee levied under the impugned notices is distinct and different from the advertisement fee already paid by the petitioners for the period upto 31-03-2005. The levy under the impugned notices is in tune with the decision of the Standing Committee in the Resolution dated 28-12-2004 according permission for erection of Uni-poles subject to payment of licence fee. Nothing has been placed before this Court to show that the Corporation is not competent to levy licence fee for erection of Uni-poles. Hence, the contentions of the petitioners are without any substance and the relief as prayed for cannot be granted.

In the circumstances, I do not find any merit in the Writ Petition and the same is accordingly dismissed. However, the respondents are granted two weeks time from today for payment of the amounts demanded under the impugned notices. No costs.

07th March, 2005.

gbs

To

1. The Commissioner, Municipal Corporation of Hyderabad, MCH Buildings, Tank Bund Road, Hyderabad.

2. 2 CD copies